



## ***AZ POST***

### ***INTEGRITY BULLETIN***

***Volume No. 21***



The Arizona Peace Officer Standards and Training Board (AZ POST) is mandated by the legislature to establish and enforce the physical, mental, and moral fitness standards for all peace officers in the state. The Board meets the charge to protect the public by overseeing the integrity of Arizona's law enforcement officers by reviewing cases and taking action against the certification of individuals who violate the AZ POST Rules. The following is a summary of some of the actions taken by the Arizona Peace Officer Standards and Training Board at its **January and February 2005** public meetings. These actions are not precedent setting, in the sense that similar cases will end with the same result, because each case is considered on its individual facts and circumstances. Having said that, this Board publishes this bulletin to provide insight into the Board's position on various types of officer misconduct. As always, the Compliance Specialist for your agency is available to discuss any matter and to assist you with any questions you might have. The "*Editor Notes*" and the "Frequently Asked Questions" section are historical observations and insights for training and discussion purposes only.

#### **CASE NO. 1**

#### **DISHONESTY**

Officer A was served with a Petition and Injunction Against Harassment and he requested a hearing. The petitioner believed Officer A was having an affair with his wife. During the hearing on the injunction, the petitioner asked Officer A the question, "Have you ever had sexual intercourse with my wife?" Officer A testified, under oath, that he had not. This testimony was false. Petitioner made a complaint about the false testimony to the department. Officer A denied throughout the internal investigation that they had engaged in sexual relations prior to the hearing. An Administrative Law Judge found the testimony was false and that Officer A lied during the administrative investigation after the Garrity warnings were administered. Officer A's attorney argued that the testimony concerned a purely private subject and not Officer A's official duties. The ALJ found that Officer A had committed the offense of false information to a law enforcement officer and malfeasance in office. The Board revoked his peace officer certification.

#### **CASE NO. 2**

#### **DISHONESTY**

Officer B was on administrative leave and ordered to be at his home between 0800 and 1600 weekdays. He went to another police department to drop off an application at about 0900 on a weekday. When questioned about the time of his visit to the other department during an internal affairs investigation and after Garrity warnings, Officer B stated he was at the other department before 0800 and later acknowledged this statement was not correct. An ALJ from the Office of Administrative Hearings conducted a hearing and concluded that Officer B committed malfeasance by being untruthful to investigators about the timing of his visit to the other department to drop off an application. The ALJ also recommended two factors in mitigation. Officer B volunteered some critical evidence and the whole situation arose because a criminal defendant made a false complaint against Officer B which was the reason he was on administrative leave in the first place. The Board suspended his certification for one year prospectively.

**CASE NO. 3****DISHONESTY**

Deputy C failed to disclose two felony arrests on his POST Personal History Statement and Application for Certification. The intentional omissions were not discovered until the deputy went from reserve to regular, over five years after first being certified. The Board revoked his certification for providing false information in connection with obtaining certification, committing an offense involving dishonesty and malfeasance.

**CASE NO. 4****THEFT**

Officer D stole cash and products from a department cantina room that was run on the honor system. Evidence included a video tape of instances of the theft. Officer D requested a hearing before the Office of Administrative Hearings to dispute the allegation, but she did not appear at the hearing. By Board rule, if an officer requests a hearing and does not appear, the ALJ may vacate the hearing and the Board may deem the conduct alleged to be admitted. The Board revoked Officer D's certification for committing theft and malfeasance.

**CASE NO. 5****DISORDERLY CONDUCT**

Officer E argued with his mother over how dinner was cooked. He went outside and fired a Mossberg 835 12-gauge shotgun at an anthill to "blow off some steam." He pled guilty to misdemeanor disorderly conduct and completed the anger management required by the court. An ALJ found, after hearing, that he committed felony disorderly conduct and the Board suspended his certification for a period of one year from the date his misdemeanor probation was terminated by the court.

On January 19 and February 16, 2005, the Board voted to close out the following cases without initiating a Complaint for disciplinary action. In some of these cases, the Board directed staff to assure that any hiring agency would comply with the misconduct reporting statute by inquiring of the past agency whether violations of POST rules existed.

- A sergeant was investigated numerous times for poor performance, judgment and demeanor.
- A sergeant was insubordinate when he discussed an ongoing internal affairs investigation with a co-worker after being ordered not to do so.
- A cadet's wife claimed he assaulted her, however, a witness reported verbal argument only with no physical contact.
- An officer claimed he was not aware of causing minor damage to a patrol car. The agency found him untruthful. The Board gave him the benefit of the doubt.
- An officer submitted a supplemental report in a child molestation case in which he erroneously reported the case was "closed as Unfounded."
- An officer applied for a resident hunting license a month before he was eligible.
- A recruit engaged in an argument with her husband during which clothing was thrown.
- An officer while off duty drove his personal vehicle while under the influence of intoxicating liquor.\*
- An officer failed to pay another officer for off duty work she performed for him until two years later, after an internal investigation interview.
- An officer failed to comply with a subpoena by failing to be available to testify telephonically.
- An officer was insubordinate by disobeying a "do not discuss" order concerning an internal investigation.
- An officer was accused of assault by his wife, a report that was determined not to be credible.

The Board adopted consent agreements calling for voluntary relinquishments or denials of certification where the following allegations had been made, but not proven.

- An officer called a business owner and alerted him to police surveillance of the business. The same undercover surveillance officer called in a false report of a domestic disturbance at a residence in order to gain entry when responding patrol officers arrived.

The Board ordered mandatory revocations for conviction of a felony for the following offenses.

- Soliciting transfer of a narcotic drug, a class 4 felony.

*\*Editor's Note.*

*Historically, the Board has chosen not to take disciplinary action against the certification of officers who drove their personal vehicle off duty while under the influence of intoxicating liquor, where it was a one time isolated incident. The reasons included that the officers had already lost their jobs as a punishment and that seemed adequate. The Board has most prominently been concerned with integrity issues rather than general misconduct. Additionally, some agencies do not terminate officers for off duty DUI and the Board usually does not learn of these officers' misconduct. The Board has increasingly engaged in discussions during the past year about the propriety of leaving discipline for DUI to agency discretion. The Board will be placing the issue on an agenda this Spring for a thorough discussion about what the role of the Board should be, if any, in discipline for DUI. Readers are invited to provide input by writing to or calling Tom Hammarstrom, at 2643 E. University Drive, Phoenix, AZ 85034, 602-223-2514.*